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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,013	03/22/2006	Hiromasa Iwashita	25040-1611	2507

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EXAMINER

MAI, TRI M

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3781

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/573,013	Applicant(s) IWASHITA ET AL.	
	Examiner Tri M. Mai	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08).
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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1. Claims 1-3, and 5-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the specification set forth the body rotate from the bottom to the neck. The drawing shows the body does not have a height extending from the bottom to the neck. It is noted that portion 2 is the neck and portion 3 is identified as the shoulder portion, and the body is identified as portion 4. It is noted that the body only capable of rotating along a height from the bottom of the body to the shoulder since the shoulder is recited as a separate element. Thus, the recitation of the body rotate from the bottom to the neck is incorrect because there is a shoulder between the body and the neck.

In claims 1-3, "the cross-sectional shape of the body rotates" is confusing. The cross-section shape" does not rotate. The body is twisted about vertical central axis. The term "the cross-sectional shape" denotes a two dimensional planar shape, and it does not rotate.

2. Claims 1-3 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Frydlender (D168932) in view of Sudbeaz (2858558). Frydlender teaches a bottle having a shoulder, a body, bottom, a cross sectional shape at the body is a regular polygon, each angle of the polygon is rounded off and an arc as claimed (there is a small rounded corner noticeable in Fig. 4). The cross-sectional shapes have the same shape at any portion of the body. Frydlender has a circle circumscribed about the cross sectional shape as claimed, i.e., the apex of the angle rotate to the next angle thus creating a circle circumscribed about the cross sectional shape as claimed.

As set forth in the previous Office Action, the claim only set forth the body being rotated and that is what is taught in Frydlender. Furthermore, it is noted that the shoulder in Frylender

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having is flat. Thus, the body of Frydlender rotates in proportion to a height along the central axis from the bottom to the neck as claimed.

With respect to the bottle symmetrical rotating around the axis, it is submitted that when being view from above, the entire bottle is twisted and symmetrical about two axes.

Sudbeaz teaches that it is known in the art to make a bottle from either plastic or glass (Sudbeaz, col. 2, ln. 25). It would have been obvious to one of ordinary skill in the art to make the bottle from either plastic or glass to provide the desired material for the bottle.

In a different way interpreting the claim, the cap and sidewall body portion bottle in Frydlender together can constitute the body as claimed. The claim provide no definite way to specify what portion being the body, or shoulder, or neck. The body of the container in Frydlender comprises the sidewall body and the cap.

In the alternative it would have been obvious for one of ordinary skill in the art to provide the rotation angle of the body sidewall portion rotated symmetrically as claimed. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241)

Regarding claim 3, note the apex of the angle twists to the next angle thus creating a circle circumscribed about the cross sectional shape as claimed.

3. Claim 1-3 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Frydlender rejection, as set forth above, and further in view of either Herrmann et al. (D520432) or O'Reilly (D328 432). To the degree it is argued that that Frydlender does not teach the arc at each angle. It would have been obvious for one of ordinary skill in the art to provide round edges at the corner as taught by either Herrmann et al. or O'Reilly, to provide added safety from sharp edges.

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4. Claim 5 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Frydlender, as set forth in paragraphs 2 and 3, and further in view of Sugiura (5928742). The Frydlender combination meets all claimed limitations except for bottle is made from PET. It would have been obvious for one of ordinary skill in the art to make the bottle from PET as taught by Sugiura to provide the desired plastic for the bottle.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frydlender, as set forth in paragraphs 2 and 3, and further in view of either Ota or Rumney. The Frydlender combination meets all claimed limitations except for the cross section being hexagonal. It would have been obvious to one of ordinary skill in the art to provide a hexagonal bottle as taught by either Ota or Rumney to provide the desired shape for the bottle. A change in shape would have been an obvious matter, since the claimed is nothing more than one of numerous configurations a person of ordinary skill in the art would find obvious. (See *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459).

Matter relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. In *re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

6. Applicant's arguments have been fully considered but they are not persuasive, with respect to the 112 rejections, the claim recites the body rotate symmetrically around the central axis in proportion to a height a long the central axis from the bottom to the neck. The drawing does not identify this height. It is noted that portion 2 is the neck and portion 3 is identified as the shoulder portion, and the body is identified as portion 4. It is submits that the body only rotates along a height from the bottom of the body to the shoulder since the shoulder is recited as

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a separate element. Thus, the recitation of the body rotate from the bottom to the neck is incorrect because there is a shoulder between the body and the neck.

As set forth in the previous above, the cross section shape does not rotate at all. It is the body that is twisted along the sidewall of the bottle.

With respect to the Frydlender rejection, applicant asserts Frydlender does not show such symmetric and proportional rotation. The examiner submits that the bottom in Frydlender rotates symmetrically, i.e., all points of the bottle are twisted similar to that of applicant. The term "symmetrically" is broad does not require the rotation to be completed. When being view from above or from the bottom, the container is symmetry about at least one axis, and this is enough to meet the claims.

In a different way interpreting the claim, the cap and sidewall body portion bottle in Frydlender together can constitute the body as claimed. The claim provide no definite way to specify what portion being the body, or shoulder, or neck. The body of the container in Frydlender comprises the sidewall body and the cap.

Event to the degree applicant insists that the body is limited to the sidewall body, the body of Frydlender is twisted from a height of the bottom to the neck. The claim does not require the body to be rotated along the entire height of the body along with the shoulder being rotated.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai
Primary Examiner
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